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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,792	12/29/2000	Kent Wendorf	81862.P239	5312

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EXAMINER

VINCENT, DAVID ROBERT

ART UNIT PAPER NUMBER

2661

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Applicati n No.

09/751,792

Applicant(s)

WENDORF ET AL.

Examiner

David R Vincent

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-- The MAILING DATE of this c mmunication appears n th cover sheet with the corresp ndence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) 12-18,30-36,48-54 and 66-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11,19-29,37-47 and 55-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/27/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "table", as specified in e.g., claims 3, 21, 39 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

**Points to consider if an amendment is to be filed**

The claims use the term rate(s) without defining what rate the applicant is referring to. The claims do not specify any ATM terms or art such as minimum cell rate/MCR, peak cell rate/PCR, or sustainable cell rate/SCR.

Claims such as 9-11, 27-29, 45-47, 64-66 specify selecting a service group but never specify why the group is selected, for what reason, or what happens next.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-11, 19-29, 37-47, and 55-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. For example:

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The independent claims specify transmitting a data unit having a rate higher than each virtual connection rate. Meaning, it appears as if the data unit has a higher rate than every VC. The specification only discloses selecting service groups with the highest rate (540, Fig. 5; pg. 9, lines 3-9; pg. 12, lines 14-18) but does not disclose how a data rate can exceed all the VC rates etc.

4. Due to the indefiniteness of the limitation as explained in the 35 USC § 112 rejection, the following rejections are based upon the broadest interpretation of the claims, disregarding the limitation of transmitting a data unit having a rate higher than each virtual connection rate. Transmitting a data unit having a rate higher than each virtual connection rate is read as possibly meaning selecting service groups with the highest rate.

***Claim Rejections - 35 USC § 102***

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly

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or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-2, 8, 19-20, 26, 37-38, 44, 55-56, 60-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Fan (US 6,342,165).

As shown in e.g., Figs. 1-3, and 10 Fan discloses receiving a plurality of data units (ATM cells, Fig. 2; col. 1, lines 50-60; col. 2, lines 8-19), along a plurality of virtual connections (VCs, ATM cells use VPI/VCIs in their headers to indicate which VC and VP/virtual path they need to traverse in order to get the QoS they negotiated during CAC, col. 2, lines 8-18; col. 5-6; Fig. 2a) having a predetermined unit rate (the claims do not specify any ATM terms or art such as minimum cell rate/MCR, peak cell rate/PCR, or sustainable cell rate/SCR, this reads on performing CAC and negotiating what the allowable cell rate along any given VCI and VPI will be, e.g., cols. 2, 6, 9-10, 13-14; in ATM there are a plurality of VCs in a VP and a VC cannot have an infinite cell rate), storing the data units (using buffers or queues, Fig. 2; cols. 5-6, especially col. 5, lines 1-35), transmitting a data unit having a rate higher than each virtual connection rate (read as possibly meaning selecting

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service groups with the highest rate; selecting CBR data as being the highest priority and allowing the most bandwidth, col. 9, lines 3-39; col. 24, lines 29-46; col. 25, lines 11-21; also, sooner or later an output scheduler will inherently select the data unit with the highest data rate, Fig. 10; the claims do not specify when this happens or under what conditions), as specified in claims 1-2, 8, 19-20, 26, 37-38, 44, 55-56, 60-65.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 6-7, 9-11, 24-25, 27-29, 42-43, 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan, as set forth above.

Although Fan also discloses selecting a service group interface (selecting an L OP or OP, Figs. 2-3, and respective disclosure) determining a service group having a departure time parameter value lower than or equal to current time value (e.g., col. 14, line 64-col. 20, line 43, especially col. 16, lines 4-

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10), service groups (OMs, Figs 2-3) having a plurality of classes (CBR, VBR, etc, Figs. 2-3, col. 1-25, especially, col. 5-6, 9, 24-25), service group interface (L OP 1-16, each having a plurality of classes, Figs. 2-3 and respective disclosure) and buffers wherein a class of service buffer corresponds to a class of service and (buffers, or queues, Fig. 1-3, or 10; cols. 5-6, 24-25), Fan fails to particularly call for line cards, as specified in e.g., claims 6, 24, and 42.

It is considered obvious to one of ordinary skill that since Fan discloses input modules (Figs. 1-2; e.g., cols. 5-6, especially col. 5, lines 1-35), input ports and a bus (col. 5, lines 8-27) that input line cards are or can be used, especially since the term line card was not further defined. Using line cards would amount to using the input modules (Fig. 1) or using cards that connect to the TDM bus or core of switch. Doing so would allow for a rack to be created wherein a unit/switch can accept a plurality of different cable/fiber inputs connected to the cards and allow for cards to be added to, deleted, or changed in the event that one fails.

Claims 3-5, 21-23, 39-40, 57-57 are not being rejected with art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R

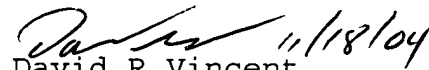


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Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571 272 3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David R Vincent  
Primary Examiner  
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November 18, 2004